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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SANTA ANA DIVISION**

10 In re:

Chapter 11

11 THE LITIGATION PRACTICE GROUP,
12 P.C.,

Case No. 8:23-bk-10571-SC

13 Debtor.

13 **OBJECTION TO REQUEST FOR**
14 **ASSIGNMENT TO MEDIATION**
15 **PROGRAM AND REQUEST FOR**
16 **STATUS CONFERENCE**

[Status Conference Requested]

1 The Official Committee of Unsecured Creditors (the “Committee”) of The Litigation Practice
2 Group P.C. (the “Debtor”), in the above-referenced bankruptcy case (the “Bankruptcy Case”) pending
3 under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”)¹ hereby submits this
4 objection to the *Request for Assignment to Mediation Program* [Docket No. 1297, 1298] (the
5 “Mediation Request”) filed by Morning Law Group, P.C. (“MLG”) and request for status conference.
6 In support of this objection and request for status conference, the Committee respectfully states as
7 follows:

8 **OBJECTION AND REQUEST FOR STATUS CONFERENCE**

9 Administrative efficiency and expedited resolution of any dispute concerning the *Agreement*
10 *of Purchase and Sale and Joint Escrow Instructions* [Docket No. 416] (the “APA”) is essential. As
11 set forth in the Committee’s status report [Docket No. 1267] (the “Status Report”), the Committee is
12 aware that MLG has raised a dispute that may impact the timing and amount of payments owing under
13 the APA. Given projected recoveries in this Bankruptcy Case, prompt, efficient, and final resolution
14 of the dispute is critical to the outcome of this Bankruptcy Case and the pending solicitation of the
15 joint plan proposed by the Committee and chapter 11 trustee (the “Trustee”). On Sunday, June 2,
16 2024, at about 4:00 p.m, MLG requested that the Committee join in efforts to mediate.² As set forth
17 more fully below, the Committee submits that a status conference before this Court, following MLG’s
18 production of information required under the APA due today, presents the most efficient and
19 procedurally correct approach to determine an appropriate process for dispute resolution.

20 As set forth more fully in the Status Report, the Committee is in the process of obtaining
21 information necessary to understand the merits of the dispute alleged by MLG. The Committee
22 served on MLG a notice of demand for certain financial information necessary to compute payments
23 and timing under the APA, pursuant to § 2(b) of the APA and as consistent with the covenants and

24 ¹ Unless otherwise noted, all references to “Section” or “§” refer to a section of the Bankruptcy Code.

25 ² The Committee is unclear why MLG requested the Committee’s position on less than 24 hours’
26 notice; however, the short notice, combined with the Wednesday disclosure deadline, offers little
27 reasonable opportunity for the Committee to weigh the benefits or need for mediation. As an essential
28 party to mediation under the APA, sale order, and as a plan proponent, the Committee reserves all
rights to participate in mediation but does not believe there is sufficient information to assess the
request at this time on the notice contemplated by MLG.

1 representations set forth in § 12(p) and (q) of the APA. Pursuant to § 2(b) of the APA, MLG has five
2 business days to respond to the request for information, *i.e.*, June 5, 2024, and provides that the Court
3 shall be the sole forum for resolution of any dispute related thereto. MLG has sought to cloak nearly
4 all disclosures required under the APA in confidentiality based on spurious claims of privilege or
5 confidential business information. *See* Docket No. 1278. While the Committee finds these claims
6 dubious, the Committee has agreed to production of the requested information on a “professionals’
7 eyes only” basis, subject to the Committee’s rights under the APA, in the interest of expediently
8 assessing the scope of the dispute.

9 Based on the Committee’s review thus far, it appears the dispute relates principally to contract
10 interpretation and involves little, if any, reliance on MLG’s allegedly confidential commercial
11 information. Specifically, it is the Committee’s understanding that the dispute centers on differing
12 interpretations of the following section of the APA, which provides for a fee reduction:

13 Prior to Closing, the Buyer shall have full inspection of and access
14 rights to the Active Executory Contracts. If, in the 90-day period
15 following the Notice of Assumption and Assignment and Opt Out
16 Notice, there is a 5% or greater variance below the number of Active
17 Executory Contracts as of the Closing date, then the Fee shall be
18 reduced by \$400.00 for each Active Executory Contract cancelled in
19 the 90-days after the Notice of Assumption and Assignment and Opt
20 Out Notice. The reduction shall be offset against any Fees owed. No
21 court order is needed for Buyer to apply this offset. This will be a self-
22 executing provision.

23 APA, § 2(b) at 8. The differing interpretations appear to relate the contracts that fall within the scope
24 of “Active Executory Contract[s] cancelled in the 90-days after the Notice of Assumption and
25 Assignment and Opt out Notice.” *Id.* At this time, the Committee is concerned that the additional
26 administrative cost of proceeding with nonbinding mediation—requiring additional briefing,
27 attendance of professionals, and subsequent motion practice under Bankruptcy Rule 9019 in the event
28 of resolution—on this straightforward issue outweighs the cost of bringing it before the Court. The
Committee is concerned that the delay associated with a mediation process is inappropriate where the
ultimate “earn-out” under the APA may impact confirmation.

Moreover, the approach is consistent with MLG’s longstanding position that nearly any
information concerning the dispute is protected. MLG’s failure to offer a fulsome description of the

1 dispute or its merits, combined with repeated claims of “highly sensitive, confidential business
2 information,” raises concerns that the Mediation Request is merely an effort to sidestep broad
3 disclosure obligations set forth in the APA. Interference with access to disclosable information may
4 bear on the concurrent confirmation process given the potential materiality of the amount and timing
5 of sale proceeds to confirmation. The Committee is concerned that mediation will offer MLG yet
6 another toehold to claim that fundamental deal information—the exact scope of the dispute, the
7 amount in dispute, and other purchase price information—is somehow confidential or proprietary.
8 Even if mediation is ordered, the Committee submits that this basic information, along with the merits
9 of the dispute, will need to be publicly disclosed in any settlement process before this Court.

10 Setting a status conference on the Mediation Request is consistent with the Court’s local rules.
11 The Court may only order assignment of a matter to mediation upon a request of the parties if there
12 is a contested matter, adversary proceeding, or “other dispute.” *See* LBR, Appx. III (Mediation
13 Program, § 5.1 at 3).³ The Court may assign a matter to mediation by order of the Court at a status
14 conference or other hearing. *See id.* (Mediation Program, § 5.2 at 3). In this instance, MLG has tip-
15 toed around the scope and merits of its alleged dispute. There is no pending contested matter or
16 adversary proceeding, and MLG’s own description of the “dispute” is merely an oblique reference to
17 “[a]n issue with respect to the calculations of payments and the adjustments” in its status report and
18 a further vague refers to a dispute “regarding MLG’s calculation of the offsets to which MLG is
19 entitled” in the Mediation Request. *See* Docket No. 1259 (MLG Status Report, at 2); Docket No.
20 1297, 1298 (Mediation Request at 2). Specific identification of the issue—and at least a summary
21 position of its potential merits—is consistent with the Court’s mediation procedures and will offer a
22 complete understanding whether the administrative cost of nonbinding mediation is worthwhile in
23 lieu of prompt resolution before this Court, as contemplated in the APA and sale order.

24 A status conference will permit parties to present their concerns for the Court’s consideration
25 in advance of any order assigning the dispute to mediation on a complete record.

26
27
28 ³ *See also In re Adoption of Mediation Program for Bankruptcy Cases and Adversary Proceedings*,
3d Am. Gen. Order (Bankr. C.D. Cal. Jan. 5, 2010).

CONCLUSION

The Committee's central concern is administrative efficiency and the avoidance of unnecessary delay. The Committee submits that the Court should hear the scope and merits of the alleged dispute before determining whether a nonbinding mediation process—that may be followed by litigation before this Court—is truly the most efficient approach to dispute resolution. Accordingly, the Committee respectfully requests that the Court set the Mediation Request for status conference as soon as is practicable.

Respectfully submitted on this 5th day of June, 2024.

FOX ROTHSCHILD LLP

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 900, Los Angeles, CA 90067.

A true and correct copy of the foregoing documents entitled: OBJECTION TO REQUEST FOR ASSIGNMENT TO MEDIATION PROGRAM AND REQUEST FOR STATUS CONFERENCE on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 6/5/2024, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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2. **SERVED BY UNITED STATES MAIL:** On 6/5/2024, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows.

Debtor

The Litigation Practice Group P.C.
17542 17th St., Suite 100
Tustin, CA 92780

See attached for additional parties

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 6/5/2024, I served the following persons and/or entities by personal delivery, mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Scott C. Clarkson
United States Bankruptcy Court, Central District of California
411 West Fourth Street, Suite 5130 / Courtroom 5C
Santa Ana, CA 92701-4593

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

6/5/2024

Kimberly Hoang

/s/ Kimberly Hoang

Date

Printed Name

Signature

Additional Parties Served by U.S. Mail

Creditors who have the 20 largest unsecured claims

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MC DVI Fund 1, LLC; MC
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Validation Partners LLC
1300 Sawgrass Pkwy, Ste. 110
Sunrise, FL 33323

Marich Bein LLC
99 Wall Street, Ste 2669
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3 Azevedo Solutions Groups, Inc.
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4 Kenwood, CA 95452
5 Debt Pay Pro
1900 E Golf Road, Suite 550
6 Schaumburg, IL 60173
7 Sharp Business Systems
8670 Argent St
8 Santee, CA 92071
9 Tustin Executive Center
1630 S Sunkist Steet, Ste A
10 Anaheim, CA 92806
11 Exela Enterprise Solutions
2701 E. Grauwyler Road
12 Irving, TX 75061
13 Netsuite-Oracle
2300 Oracle Way
14 Austin, TX 78741
15 Credit Reporting Service Inc
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16 San Francisco, CA 94104-5401
17 Document Fulfillment Services
2930 Ramona Ave #100
18 Sacramento, CA 95826
19 Executive Center LLC
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21 LexisNexus
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22 Irvine, CA 92618

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27 City Capital NY
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